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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Elia Rocco Tarantino)

Group Art Unit 3714)

Appl. No. : 10/810,782)

Filed : March 26, 2004)

For : GAME USING SECONDARY
INDICIA PROVIDING GAME
STATUS INFORMATION)

Examiner : Manjot K. Dhillon)

I hereby certify that this correspondence and all marked
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August 6, 2009

(Date)

R. Scott Weide, Reg. No. 67,755

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

By the Office Action mailed May 8, 2009, the Examiner indicated the rejection of Claims 1, 6, 8, 9, 16 and 17 under 35 U.S.C. § 103(a) as unpatentable over Luciano (US Pub. 2003/0232638) in view of Beaulieu et al. (US Pub. 2003/0017865) and rejected Claims 2-5 and 7 as being unpatentable over that combination in further view of Bennett et al. (WO 2000/32286).

Independent Claim 1

The invention is directed to a keno game in which a player selects player numbers and then game numbers are selected and compared to the player numbers. For example, a player might select 20 numbers from a set of numbers 1-80. A set of 20 game numbers is then randomly selected from the numbers 1-80 and those game numbers are compared to the player selected numbers. A player may be declared a winner if a sufficient number of the game and player selected numbers match. In accordance with the invention, indicators are utilized to more easily convey to a player the status of the game, including the numbers they have selected, the game numbers, and whether the player numbers have been matched or not. In particular, Claim 1 recites a keno game in which player selected numbers

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are designated with a first indicator. As to each player number which is matched by a game number, the first indicator is *removed* and a match indicating secondary indicia which does not include the first indicator is displayed. As to each player number which is not matched by a game number, the first indicator is *removed* and a non-match indicating secondary indicia is displayed, that secondary indicia not including the first indicator and differing from a match indicating secondary indicia. In this manner, one indicia is used to designate to the player their selected numbers. Then, when the game numbers are compared, a match indicating indicia is displayed to show to the player those player numbers which were matched, and a non-matching indicia is displayed to show to the player those players numbers which were not matched.

The foundational premise of the Examiner's rejection is that Luciano, Jr. discloses designating player selected numbers with a first indicator (check mark), displaying a matching indicating indicia for each matched player number (check mark and shading), and displaying non-match indicating secondary indicia in association with each unmatched player number (box that is unchecked and shaded).

However, Claim 1 requires that as to each player selected number that is matched, removing the first indicator and displaying a match indicating secondary indicator in association with the player selected number, where the match indicating secondary indicia does not include the first indicator. As the Examiner admits, Luciano does not teach or suggest such. At most, Luciano discloses shading player selected numbers which are matched. In that event, the first indicator (the check mark) is *not* removed, and moreover, the "matching indicating secondary indicia" includes the first indicator (because it includes the original check mark and shading). See Exhibit A.

Second, Claim 1 requires that as to each player number that is not matched, removing the first indicator and displaying a non-match indicating secondary indicia *which does not include the first indicator and which is different than the match indicating secondary indicia*. Luciano, Jr., does not

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disclose or suggest such. In particular, in Luciano, Jr., the original “check marks” designating player selected numbers are not removed even if the player number is not matched. In fact, in Luciano, Jr., no change is made to show that a player number was not matched. In particular, unmatched player numbers are still designated by a check-mark (selected game numbers which do not match player numbers are shown with highlighting, but no “non-matching indicia” are displayed in place of a check mark relative to each player number that was not matched). See Exhibit A.

The Examiner further cites Beaulieu at al. as disclosing the replacement of indicia. Beaulieu more specifically discloses that the appearance of indicia may be changed, such as through the progression of a game. However, this teaching does not remedy the deficiencies of Luciano. Both references disclose that various symbols may be used in the play of a game. However, these references do not disclose, alone or in combination, a manner of designating initially selected player numbers and matches or non-matches of those numbers, as detailed. For example, like Luciano, Beaulieu does not disclose removing one indicia showing a player selected number and displaying a different match indicating indicia for each player number that is matched, and displaying yet a different non-match indicating indicia for each player number that is not matched. It is not even clear how the concept of changing the appearance of indicia disclosed in Beaulieu could be applied to Luciano. In a game of keno, there are no incremental “stages” working towards a potential end result where changing the appearance of indicia shows how close the player is to a particular result. Player numbers are either matched or they are not matched. Luciano already discloses that indicia (check marks) may be used to designate player numbers and game numbers. It is not clear how those check marks and highlights could change appearance over time per Beaulieu, but in any event, such would still not result in the manner of designation as claimed.

Dependent Claims 2-9 and 16-17

In that the prior art fails to disclose the limitations of base independent Claim 1, Applicant asserts

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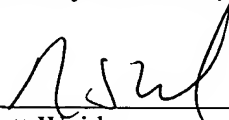
that Claims 2-9 and 16-17 dependent thereon are allowable. For example, while the Examiner has cited Bennett et al. against Claims 2-5 and 7, this citation is relative to a disclosure of animated figures. This disclosure does not remedy the deficiency of the base reference(s) to the limitation of Claim 1 upon which these claims depend.

In addition, Applicant asserts various of these dependent claims also define patentable subject matter. For example, Claim 17 recites the additional step of designating game numbers with a secondary indicator. Luciano, Jr. does not suggest such. In particular, in combination with the base limitations of Claim 1, Claim 17 recites that player numbers are designated with a first indicator, game numbers are designated with a secondary indicator, and then secondary indicia are used to indicate player numbers which are matched or not matched. Luciano, Jr. at most discloses two indicators: check marks and highlighting. Luciano, Jr. clearly does not disclose or suggest first and second indicators and secondary indicia as claimed.

Summary

For at least these reasons, Applicant asserts that Claims 1, 2-9 and 16-17 are in a condition for allowance.

Respectfully submitted,

Dated: August 6, 2009 By: 

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